

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1221/Mds/2016

निर्धारण वर्ष / Assessment Year : 2007-08

Shri Mukund R. Kathare,  
C/o S. Venkatram & Co.,  
Chartered Accountants,  
218, T.T.K. Road, Alwarpet,  
Chennai - 600 018.

v. The Assistant Commissioner of  
Income Tax,  
Company Circle – I(3),  
Chennai - 600 034.

PAN : AABPK 2815 L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri G. Seetharaman, CA

प्रत्यर्थी की ओर से/Respondent by : Shri B. Sahadevan, JCIT

सुनवाई की तारीख/Date of Hearing : 04.01.2017

घोषणा की तारीख/Date of Pronouncement : 31.01.2017

### **आदेश /O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) – 1, Chennai, dated 08.03.2016 and pertains to assessment year 2007-08.

2. Shri G. Seetharaman, the Ld. representative for the assessee, submitted that the assessee sold agricultural land at

Padur Village and offered capital gain for taxation. According to the Ld. representative, the land at Padur village was classified as wet land. The assessee, in fact, was cultivating paddy in the said land. This is evidenced from the adangal and chitta extracts maintained by the Village Administrative Officer. However, the assessee wrongly included the capital gain in the total income. According to the Ld. representative, capital gain on sale of agricultural land is exempt for taxation under the Income-tax Act. In other words, the capital gain on sale of agricultural land is also considered to be an agricultural income, hence, it cannot be subject matter of taxation under the Income-tax Act.

3. The Ld. representative for the assessee further submitted that an appeal was filed before the CIT(Appeals) contending that the income was wrongly included in the total income, therefore, in view of the judgment of Madras High Court in Sakuntala Vedachalam & Vanitha Manickavasagam v ACIT (369 ITR 558), the profit on sale of agricultural land cannot be included in the total taxable income. The CIT(Appeals) ignoring the evidence filed by the assessee, observed that the assessee has not adduced any evidence to show that the land in question is an agricultural land.

Referring to the copy of adangal and chitta extracts, a copy of which is available at page 4 and 5 of the paper-book, the Ld. representative submitted that these are the revenue records which indicate that the land in question is agricultural land and the assessee was cultivating paddy. Therefore, according to the Ld. representative, the CIT(Appeals) is not justified in saying that the assessee has not adduced any evidence.

4. On the contrary, Shri B. Sahadevan, the Ld. Departmental Representative, submitted that the assessee admittedly has not claimed that the land in question is agricultural land, before the Assessing Officer. The assessee voluntarily offered the gain on sale of the land for taxation. Therefore, the Assessing Officer accepted the offer made by the assessee. According to the Ld. D.R., the CIT(Appeals) found that there was no evidence to indicate that the land in question is agricultural land. The CIT(Appeals) further found that even if it is agricultural land, it is not eligible for exemption since the said land was within the city limit. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

5. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee claims that the profit on sale of land was wrongly included in the total taxable income. This Tribunal is of the considered opinion that if the land in question is actually an agricultural land, the profit on sale of the land cannot be a subject matter for taxation under the Income-tax Act provided it is situated beyond the prescribed limit from the city/municipality. Even if the assessee, by mistake, included the agricultural income or gain on sale of agricultural land in the total taxable income, that cannot be a reason for making an addition. If it is really an agricultural income or profit on sale of agricultural land, the profit has to be necessarily excluded.

6. The assessee has now produced copies of adangal and chitta extracts. These documents show that the land was classified as wet land in the State revenue records and the assessee was also cultivating paddy in the said land. The very fact that the land was classified as wet land shows that there was a source of irrigation in the land either from river or from natural source. However, these documents were not examined by both the authorities below. Moreover, it has to be examined whether the land in question falls

within the city / notified municipality or it is beyond the prescribed limit of the city / municipal limit. Since these facts were not examined by the Assessing Officer, this Tribunal is of the considered opinion that the matter needs to be re-examined. Accordingly, the orders of the lower authorities are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall reconsider the issue in the light of the copies of chitta and adangal extracts filed by the assessee and thereafter find out the distance between the municipal limit and the land in question and decide the issue in accordance with law, after giving a reasonable opportunity to the assessee.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 31<sup>st</sup> January, 2017 at Chennai.

sd/-

(डि.एस. सुन्दर सिंह)

(D.S. Sunder Singh)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 31<sup>st</sup> January, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-1, Chennai
4. Principal CIT, Chennai-1, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.